

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Interconnection and Resale Obligations) CC Docket No. 94-54
Pertaining to)
Commercial Mobile Radio Services)

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NYNEX Comments

The NYNEX Companies ("NYNEX")¹ submit these comments in response to the Commission's Second Notice of Proposed Rulemaking ("Second Notice") released April 20, 1995 in the proceeding captioned above.

I. Introduction and Summary of Position

In this phase of this docket, the Commission continues its inquiry into issues related to the interconnection of commercial mobile radio service ("CMRS") systems.² In the CMRS Second Report and Order,³ the Commission determined that Section 201,

¹ The NYNEX Companies are New York Telephone Company, New England Telephone and Telegraph Company and NYNEX Mobile Communications Company.

² This inquiry began in 1994, when the Commission opened a proceeding to determine the manner in which CMRS would best be competitively provided in an open marketplace. See, Equal Access and Interconnections Obligations Pertaining to Commercial Mobile Radio Service, CC Docket No. 94-54, Notice of Proposed Rulemaking and Notice of Inquiry, 9 FCC Rcd 5408 (1994). In that proceeding, the Commission examined whether LECs and CMRS providers should be required to provide interconnection and equal access to mobile service providers. In response to the Commission's inquiry, NYNEX filed comments advancing our position that regulatory equal access obligations imposed upon CMRS providers would not necessarily best serve consumers' interests. We noted that Bell-affiliated cellular companies faced a substantial competitive disadvantage as a result of equal access obligations imposed pursuant to the MFJ. We argued, in addition, that the inequitable imposition of such interconnection requirements hindered the development of a fully competitive CMRS marketplace. We also argued, for reasons of regulatory parity, that equal access obligations should be imposed on all CMRS providers until such time as the BOCs' MFJ equal access obligations were removed.

³ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994) ("CMRS Second Report and Order"), reconsideration pending.

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of the Communications Act, 47 U.S.C. § 201, requires LECs “to provide the type of interconnection reasonably requested by all CMRS providers”⁴ but that the record established in the proceeding was inadequate to support any decision whether to adopt a generic requirement that would require CMRS providers to furnish interstate interconnection to other mobile service providers.”⁵

In the instant proceeding, the Commission has determined that, “in view of the nascency of many CMRS providers, and the rapidly developing technologies they may be employing” it is premature at this time to propose or adopt rules that require direct interconnection arrangements between CMRS providers.⁶ We agree with this conclusion and applaud the Commission’s efforts to permit the industry to develop and grow in a manner that reflects the dictates of the competitive marketplace. As noted by the Commission, the record compiled in earlier phases of this proceeding also fully supports this approach.⁷ In comments filed in response to the initial Notice, NYNEX argued against the adoption of any rules that would require CMRS providers to interconnect with each other.⁸ We continue to endorse this approach as the best means to promote the development of a fully competitive CMRS marketplace.

The Commission also seeks to explore the types of interconnection arrangements that would best support roaming between CMRS systems. It is NYNEX’s firm belief that competitive marketplace forces that demand seamless calling between

⁴ Second Notice at para. 5, citing CMRS Second Report and Order at 1499-1500.

⁵ Id.

⁶ Second Notice at para. 17.

⁷ Id. at para. 19.

⁸ NYNEX comments at 11.

and within calling areas will work to ensure that roaming agreements between CMRS providers exist in order to facilitate the calling requirements of their customers.

Accordingly, any requirement to unbundle access to CMRS databases is unnecessary. NYNEX fully endorses the Commission's decision to avoid imposing unnecessary regulatory requirements upon the entire industry and, instead, to use its complaint and enforcement processes to address the aberrant behavior of an individual CMRS provider that may fail to respond to a reasonable request for a roaming arrangement.

The Commission has determined in this proceeding that the public interest would be served by imposing a resale obligation on most, but not all, CMRS providers. While we agree with the Commission that a well-defined policy in favor of resale of wireless services would increase consumer choices, drive down prices and promote competition, we believe that the Commission's decision falls short of that objective. Today, cellular carriers are required to offer service on a resale basis to anyone with the exception of their facilities-based competitor after the five-year fill-in period has expired. This resale policy has worked well and served the public interest for the past ten years. NYNEX encourages the FCC to broaden the current resale requirements that exist for cellular to include all CMRS providers.

In terms of a resale policy between competitive facilities-based CMRS providers, NYNEX supports a policy similar to that used for cellular which would remain in place concurrent with the five-year period PCS build-out requirement and that is imposed in an equitable manner on all CMRS facilities-based providers. This will best achieve the intended purpose of the policy while promoting regulatory parity.

II. Regulatory Interconnection Requirements Are Unnecessary And Likely To Interfere With The Development Of A Fully Competitive Marketplace

In paragraph 5 of the Second Notice, the Commission reiterated the requirement adopted in the Second Report and Order that LECs provide the type of interconnection reasonably required by all CMRS providers, but noted that the record compiled in prior stages of this proceeding was inadequate to indicate whether generic rules should be adopted. The Commission has correctly determined that it would be premature at this juncture to establish and impose interconnection requirements that would require CMRS providers to furnish interstate interconnection to other wireless providers. Indeed, there is no basis for any concern that market-driven, private interconnection agreements between CMRS providers would somehow fail to emerge.⁹ Wireless customers demand the ability to be reached anywhere, anytime. CMRS providers' response to this demand is well-demonstrated in the cellular industry where inter-system hand-offs and interfaces that allow disparate switching systems to communicate are commonplace. These arrangements have been achieved without regulatory interference, thereby supporting our belief that the proliferation of such arrangements will continue, even absent regulatory mandates.

In paragraphs 34-35 of the Second Notice, the Commission seeks comment on the appropriate market definition for purposes of determining whether requests for interconnection are appropriately handled by CMRS providers. The Commission notes

⁹ As noted by the Commission in paragraph 29, the majority of commenters agree that the imposition of such requirements would be premature. The Commission correctly cites the rapidly changing nature of the technologies and facilities used by wireless providers, the fact that the initial PCS auction has only just concluded and the availability of the LEC landline network and, in many places, alternative access providers for purposes of interconnection as factors that support its decision not to impose regulatory requirements at this time. See also, para. 13 at nn 23, 24 and 25.

that customer calling patterns and an assessment of market power in the relevant geographic market would be pertinent in determining whether a refusal to interconnect was motivated by an anticompetitive animus. Each of these factors may be important in determining whether a refusal to interconnect is the result of anticompetitive motives. We caution the Commission, however, that neither market power nor affiliation should, by themselves, be used as dispositive factors since anticompetitive motives may exist without either factor being present.

As noted herein¹⁰, the Commission has already determined that all CMRS providers are common carriers subject to the interconnection requirements imposed under Section 201 of the Communications Act. In the absence of a likelihood of anticompetitive conduct, the Commission should avoid adopting any new rules or policies.¹¹ In particular, as regards CMRS to CMRS interconnection, there is no need for any interconnection requirements apart from the already existing Section 201 requirements. Moreover, because interconnection can be achieved either through a wireless carrier or a landline LEC including, in many cases, alternative access providers, any need to impose any new mandates in connection with CMRS to CMRS interconnection is further reduced.

Furthermore, there is no evidence that customers demand CMRS to CMRS interconnection arrangements. As noted by the Commission and evidenced by nationwide penetration levels, the wireless industry is relatively new and in the early

¹⁰ Infra. at p.2.

¹¹ In addition, the Commission is well-able to make use of its complaint processes to redress any instances of inappropriate refusals to interconnect.

stages of development.¹² As a result, the total demand level and traffic flows between CMRS systems is small, making any CMRS to CMRS interconnection requirement excessive and economically unsound.¹³ On a usage basis, there is no present requirement for direct interconnection between competing CMRS providers. The Commission has correctly noted that “the informed business judgment of CMRS providers” and the “competitive forces of the CMRS marketplace” will adequately ensure that appropriate interconnection arrangements emerge and are maintained.¹⁴

III. Competitive Marketplace Forces Will Ensure That Parties Negotiate Roaming Arrangements Adequate To Meet Customer Requirements

In paragraph 54 of the Second Notice, the Commission determined that while the availability of roaming arrangements is critical to the development of the CMRS industry, technical issues exist that “should receive intense study and review by regulators prior to the imposition of regulatory requirements, if any are needed.” The Commission noted its preference not to adopt roaming requirements at this time and, instead, determined it necessary to seek comments on technical and policy considerations that impact roaming.

In response to this request, we note NYNEX’s policy and practice to negotiate roaming agreements with carriers on a reciprocal basis. NYNEX agrees with the Commission that the provision of a seamless, nationwide roaming capability is critical to

¹² The nationwide penetration levels of about 10 percent for the cellular marketplace falls well below the landline exchange market penetration level recently estimated at 98 percent.

¹³ Unlike callers that use the landline network, mobile customers pay usage charges for calls they place and for incoming calls. As a result, the overall number of calls incoming to a particular mobile unit is substantially lower than the number of incoming calls to a individual line on the landline network. And, within that significantly smaller number of incoming CMRS calls, only a very small number is transmitted from one CMRS system to another.

¹⁴ Second Notice at paras. 19-20.

the successful development of the CMRS industry. The ability to be reached anywhere, anytime is the essence of mobility. That roaming is an essential feature of any wireless service offering is exemplified by the degree to which roaming is available in the cellular market today. Nonetheless, we do not support American Personal Communications (APC's) request that cellular carriers be required to interconnect with PCS providers within one year of the date that an interconnection request is received.¹⁵ Our experience has demonstrated that market pressures that result from customer demand ensures that roaming agreements are forged between CMRS providers, as required. A rule that cellular carriers provide unbundled access to their databases is likely to have the anticompetitive, economically unsound result of deterring some wireless providers from investing in their own network infrastructures. To require a CMRS provider, that has made significant investments in network infrastructure, to make its network available to competitors without regard to customer demand and economic considerations is likely to reduce the incentive to invest. Such a requirement would deprive the investing provider of the ability to invest in a manner that permits it to offer distinguishable, competitive service offerings.

Instead of mandated roaming arrangements, the Commission should promote competitive service offerings by encouraging parties to mutually agree to roaming arrangements, as the market demands. CMRS providers who fail to negotiate a roaming agreement in response to a reasonable request should be subject to the Commission's complaint process.¹⁶

¹⁵ Second Notice at para. 24.

¹⁶ Id. at para. 20.

IV. The Commission Should Impose Resale Requirements On Facilities-Based CMRS Providers In An Equitable Manner

The Commission seeks comment on whether it should impose generic resale requirements on CMRS providers.¹⁷ NYNEX supports resale requirements for all CMRS providers, modeled after the rules that were adopted to govern the resale of cellular services. That is, the Commission apply resale requirements, but not beyond the 5-year build-out period for PCS licensees. A more expanded resale policy would tend to have the unintended consequence of minimizing any incentive that a reseller would have to build its own network. A policy that requires resale during, but not beyond, the 5-year build-out period and includes all facilities-based CMRS providers would serve to promote competition between CMRS providers. At the same time, such a policy would avoid interfering with the incentives that encourage providers to build in a prompt and efficient manner. Just as facilities-based cellular providers are required to offer service for resale to new PCS licensees, facilities-based PCS providers should be required to offer services to competitors for resale.¹⁸

NYNEX supports the Commission's decision not to impose the reseller switch requirement upon CMRS providers at this time.¹⁹ The existence of competition will provide resellers with opportunities for alternate arrangements. In addition, extensive unbundling and separate pricing of the cellular network would be required. Such mandatory requirements are disruptive, costly and extremely time-consuming for

¹⁷ Second Notice at para. 44.

¹⁸ Any market power concerns the Commission might have could be addressed and fully resolved by limiting such resale to areas of the PCS MTA or BTA not served by the cellular carrier.

¹⁹ The reseller switch proposal would require cellular providers to allow cellular resellers to install their own switching equipment between the cellular network's switch and the facilities of the LEC and IC.

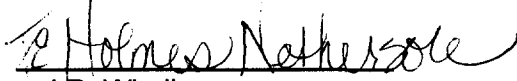
carriers and will oblige the Commission to devote considerable resources to administer regulations for competitive businesses.

V. Conclusion

The Commission should continue in its efforts to ensure that its interconnection and resale policies are market-driven and equitably applied to all CMRS providers. Accordingly, we support the Commission's decision to let market forces drive the interconnection agreements made between CMRS providers. It is premature and inadvisable at this time to adopt or propose rules that mandate specific, inflexible roaming arrangements. Instead, the Commission should permit competitors to interact as directed by competitive forces. Regarding resale, NYNEX believes that the Commission should adopt a policy that is imposed on all carriers and requires resale during, but not beyond, the PCS build-out period.

Respectfully submitted,

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Dated: June 14, 1995

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NYNEX
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to each of the parties indicated on the attached service list, this 14th day of
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